HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1216 (S/S) year 2003

Padam Narayan, Assistant Teacher

Junior High School,

Vs.

Basic Siksha Adhikari, Uttarkashi

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 09.10.2003

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Court No.6

Writ Petition No.1216 (S/S) 2003

Padam Narayan, Assistant Teacher Junior High School, Fold, Block-Dhanari Tehsil Batwari, District Uttarkashi .... Petitioners.

Vs.

Basic Siksha Adhikari, Uttarkashi ... Respondent.

Counsel for respondent **...Sri S.N. Babulkar**
Counsel for petitioners **...Sri B.D. Kandpal, Sri H.M. Raturi.**
Date of Judgment **... 09-10-2003**

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has challenged the order dated 30-06-2003, Annexure-1 to the writ petition. On 30th June 2003 the petitioner namely Padam Narayan has been shown in the list of transfer of employees dated 30th June 2003. The petitioner was transferred from Fold Block Dhanari Tehsil Batwari to Junior High School Udari Block Dunda.

The grievance of the petitioner are that in the mid term it will be improper to send them on transfer and the transfer order is volatile of Rule 21 of the U.P. Basic Education (Teachers Service Rules) 1981.

Heard Sri S.N. Babulkar counsel for the petitioner, Sri B.D. Kandpal on behalf of the State and Sri H.M. Raturi on behalf of Basic Siksha Adhikari.

Rule 21 of the U.P. Basic Education (Teachers) Service Rules 1981, is only a guideline. It reads as under:-

> ***"21. Procedure for transfer:- There shall be no transfer of any teacher from the rural local area to an urban local area or vice versa or from on urban local area to another of the same district or from local area of one district to that of another district except on the request of or with the consent of the teacher himself and in either case approval of the Board shall be necessary."***

The transfer order itself provides that according to the policy decision, transfer order has been passed. In the aforesaid circumstances, Rule 21 has no application at all. Rule 21 also does not prohibit transfer.

It has been held in the case of Mrs. Shipli Bose & others V. State of Bihar & others, A.I.R. 1991 Supreme Court page 532 that the transfer orders are passed in the public interest and for administrative reasons are not amenable to interference. The observations of the Apex Court to that effect is quoted below:-

> ***"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected partly should approach the higher authorities in the Department. If the Courts continue to interfere with day-today transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspect in interfering with the transfer orders."***

Similar view has been taken by the Apex Court in (2001) S.C.C. page 508 which is quoted below:

> ***"An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order."***

A perusal of the transfer order shows that the transfer order was passed on 30th June 2003 and therefore the same can not be treated as a mid term transfer. It is a routine transfer order. As will appear from the transfer order that the same has been passed on account of administrative exigency as well as in public interest therefore the transfer order has not violated any legal right of the petitioner.

I find no infirmity in the order of transfer. Transfer order having been passed in the public interest, no interference under Article 226 of the Constitution of India can be made.

As will appear from the judgment of the Apex Court that the petitioner have been given a right to approach the higher authorities, the petitioner have already made a representation to the higher authorities making their grievances regarding transfer.

The respondents are directed to decide the representation of the petitioner within a period of one month from filing of the certified copy of the order by a speaking order.

With these observations the writ petition is disposed of.

(Rajesh Tandon, J.)

Dated: 9.10.2003
ISB